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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROBERT G. LOPEZ, an individual,)

Plaintiff,)

v.)

OOSHIRTS, INC., and)
TUMBLR, INC.)

Defendants.)

Civil Action No. 16 CV 5426 (GHW)

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
COPYRIGHT INFRINGEMENT, UNFAIR COMPETITION AND RELATED CLAIMS**

Plaintiff, Robert G. Lopez, alleges his complaint against Defendants, Ooshirts, Inc., and Tumblr, Inc. as follows:

NATURE OF THE ACTION

1. This action arises from Defendant's infringement of Plaintiff's "ownership" and "use" rights in the marks LES NYC®, LOWER EAST SIDE™ and THE LOWER™, in conjunction with clothing and related goods and also for a violation of Plaintiff's two (2) copyrighted images for designs and artwork of the mark LOWER EAST SIDE™©. Despite Plaintiff being the registered owner of the trademarks LES NYC®, LOWER EAST SIDE™ and THE LOWER™ and several related copyright designs offering various clothing items under such brand names, the Defendant has infringed Plaintiff's rights in the aforementioned marks by copying without authorization, advertising, promoting, selling, and offering for sale clothing items under Plaintiff's trademarks and copyrighted designs. Plaintiff has already experienced "actual confusion" in connection with this matter and is likely to continue to experience

confusion as to the affiliation or connection between the Defendants and Plaintiff resulting in the unjust enrichment of Defendants by using Plaintiff's registered trademarks and copyrights.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1051 *et seq.*, 15 U.S.C. Sections 1114-1116; under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c), 17 U.S.C. §101, *et. Seq.*, 17 U.S.C. §501-509 and 28 U.S.C. §1367.

3. This Court has personal jurisdiction over the Defendants because Defendants engage in continuous and significant business activities in, and directed to the State of New York within this judicial district and ships clothing items into New York County, have an office location and because Defendants has committed tortuous acts aimed at and causing harm within the State of New York and this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because it is where Plaintiff resides and the Defendants transact business, and because a substantial portion of the events giving rise to the asserted claims have occurred, and continue to occur, within this district. Furthermore, the damage to Plaintiff and its intellectual property described herein continues to occur in this judicial district.

THE PARTIES

5. Plaintiff, Robert G. Lopez is an individual residing at 230 Clinton Street, Apt. #11C, New York, NY 10002.

6. Upon information and belief, Defendant Ooshirts, Inc. is a California corporation with a principal place of business at 41454 Christy Street, Fremont, California 94538. Defendant may be served through its registered agent, Raymond Lei, at 10035 Byrne Avenue, Cupertino, California 95014.

7. Upon information and belief, Defendant Tumblr, Inc. is a Delaware corporation with its principal executive office at 35 East 21st Street 10E, New York, New York 10010.

FACTS

8. Since at least as early as 1999, Plaintiff Robert G. Lopez has been selling headwear, t-shirts, sweaters, hooded sweatshirts and other clothing items under the LES NYC®, LOWER EAST SIDE™, LEST™ and THE LOWER™ brand names.

9. Since at least as early as 1999, Plaintiff has been independently operating a clothing business under the trade name L.E.S. CLOTHING CO.™, which has sold headwear, t-shirts, sweaters, hooded sweatshirts and other related clothing items under the marks LOWER EAST SIDE™, LES NYC®, LEST™ and THE LOWER™. Since at least as early as 2010, Plaintiff has also been selling clothing items under the mark LOYALTY EQUALS STRENGTH™ that is an additional representation for the acronym LEST™ under Plaintiff's family of LEST™ related marks.

10. In addition to selling and offering for sale clothing items under the LOWER EAST SIDE™, LES NYC®, THE LOWER™, LES CLOTHING CO.™, LEST™ and LOYALTY EQUALS STRENGTH™ brand names, Plaintiff has also continuously sold and offered for sale various clothing items including hooded sweatshirts which bear the LOWER EAST SIDE™, LES NYC® and THE LOWER™ marks in various font and design styles which are prominently displayed on the front and/or back of the headwear, t-shirts and/or sweaters.

11. Plaintiff sells, and promotes the sale of his clothing via his website www.lesclothing.com, on FaceBook® under the name "LES Teez," through order forms, and his t-shirts and sweaters are also available for sale in several retail locations in New York and other States.

12. Plaintiff advertises his LES CLOTHING CO™, LOWER EAST SIDE™ and LES NYC® and THE LOWER™ brands and clothing items through flyers, posters, stickers and

through grass root street marketing methods such as painted “street murals.” Plaintiff also has a consistent and long standing presence on social media accounts including Facebook®, Instagram®, etc. where collectively, plaintiff’s clothing is promoted to over 10,000 followers on a daily basis. Plaintiff also regularly conducts photo shoots of customers who purchase his LOWER EAST SIDE™, THE LOWER™ and LES NYC® clothing items to be included in magazine advertisements and marketing materials.

13. Plaintiff’s clothing items have appeared in magazine advertisements of nationwide and internationally distributed publications including DonDiva Magazine®. Plaintiff’s clothing under his LES CLOTHING CO.™ line have also appeared in musical video’s by Superstar Recording Artist Curtis “50 Cent” Jackson but have also been worn by celebrities such as actor Luis Guzman, recording artists Juelz Santana, Busta Rhymes, and VH1 Reality TV stars Ceaser of Black Ink Crew, Remy Ma, Papoose, Erica Mena and Tahiry just to name a few.

14. Plaintiff is the registered owner of United States Trademark Registration No. 4,549,880 for the mark LES NYC®. (See Exhibit A).

15. Plaintiff is the registered owner of New York State Trademark Registration No. R31067 for the mark LOWER EAST SIDE™. Plaintiff is also the registered owner of New York State Trademark Registration No. R31773 for the mark THE LOWER. (See Exhibit B).

16. Plaintiff is registered owner of U.S. Copyright Registration No.’s VA0001753473 and VA0001807134 under the titles “LOWER EAST SIDE MURAL©” and “LEFS Design.” (See Exhibit C).

17. Plaintiff is informed and believes and thereon alleges that Defendants have copied, published, and are advertising, marketing, promoting, selling and offering for sale several t-shirts including the ones depicted in the images below under the LOWER EAST SIDE™, LES NYC®, and THE LOWER™ marks that also violate Plaintiff’s registered copyrights and is also promoting the t-shirts in its url <https://teechip.com/nycles1>. The NYCLES1 portion of the aforementioned URL used by Defendant to promote and offer the

product for sale is a transposition of Plaintiff's LES NYC® registration thereby heightening additional instances of actual confusion of the source of the products under that trademark. (See Exhibit D).



Infringing T-shirt



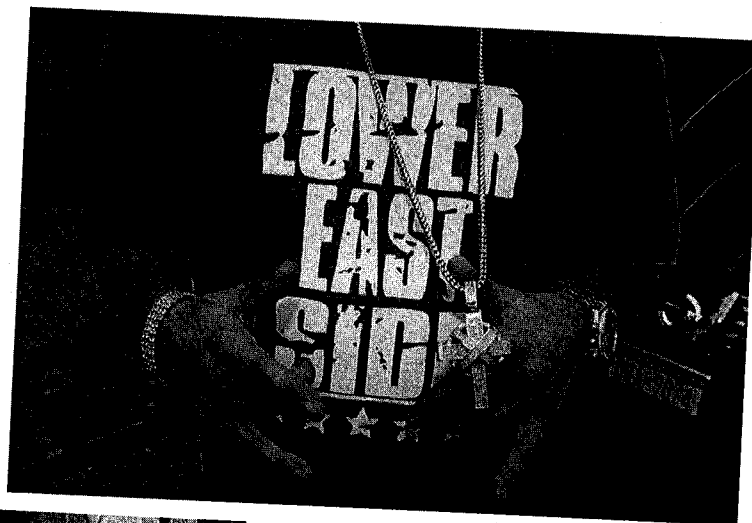
Infringing T-shirt

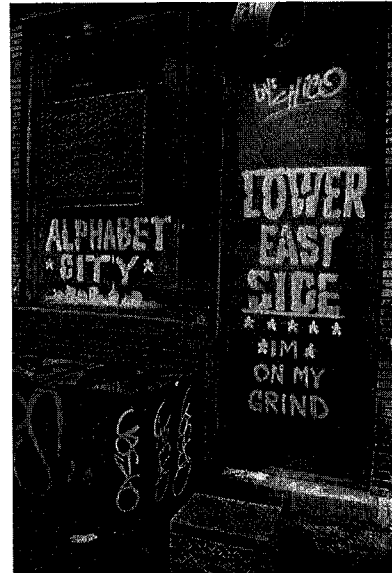
Vs.

Plaintiff's T-Shirts



All images depicted below of are Plaintiff's products and designs and promotion of the same





18. Plaintiff was contacted by several long-standing customer of his LES CLOTHING CO™, LOWER EAST SIDE™, THE LOWER™ and LES NYC® clothing products and was asked if the released t-shirt design with the LOWER EAST SIDE™ and THE LOWER™ brands that were sold and being promoted by Defendants were available at Plaintiff's retail flagship store at 43 Clinton Street, New York, NY 10002.

19. Defendants use of Plaintiff's LOWER EAST SIDE™, THE LOWER™ and LES NYC® brands in connection with clothing has already caused and will continue to cause confusion as to the source or affiliation of the source of the clothing related goods bearing the aforementioned trademarks and/or designs.

20. As shown in the pictures depicted above, Defendants similar designs as those offered by Plaintiff also has the capability of causing additional confusion where Defendants will benefit from all the years of hard work that Plaintiff has expended in building his family of LESTM marks including the brands LOWER EAST SIDETM, THE LOWERTM and LES NYC® and offering urban and graffiti inspired artwork, t-shirts and other clothing designs under such promotional marketing and sales strategy.

21. In addition to the designs being published, promoted and offered for sale at Defendant Ooshirts operated and controlled website www.teechip.com, the t-shirts designs are also published, exploited and offered for sale from the website www.reallyfreshattire.com, in which Defendant Tumblr, Inc. host the website under which the infringing t-shirts are offered for sale.

22. Defendant Tumblr, Inc. is also the entity that publishes the photographs and artwork that violate and infringe both Plaintiff's trademarks and copyrights in his registered brands and designs.

23. Defendants acts and actions collectively have been done without consent or authorization from Plaintiff's and in total disregard for his valuable intellectual property rights in his business properties.

FIRST CAUSE OF ACTION

TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114-1116)

24. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 23 of this Complaint.

25. The use in commerce by Defendant of an identical and slightly identical version of Plaintiff's registered trademark is likely to cause confusion, mistake and deception among members of the public and in trade as to the source, origin, or sponsorship of defendants' goods and services. Such use by defendant constitutes a clear and direct infringement of Plaintiff's

rights in and to Plaintiff's registered trademark, and has resulted in injury and damage to Plaintiff that will continue if defendant is not ordered to cease all use of the LES NYC® mark.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

26. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 25 of this Complaint.

27. Plaintiff has the exclusive right to market, brand and provide clothing related goods using the LES NYC® mark.

28. Defendant by reason of the aforementioned acts, have falsely described, represented and designated the origin of its goods and services. Defendants' activities already have confused the public into believing that Defendants and Plaintiff's clothing goods and accessories come from one and the same source, and defendants continued activities are likely to create further confusion and deceive the public concerning the source of the goods/services.

29. Defendant have unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined by this Court.

30. By reason of Defendant's willful acts conducted in conscious disregard for Plaintiff's rights, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(a).

THIRD CAUSE OF ACTION

COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION

31. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 30 of this Complaint.

38. Defendants, without authorization of Plaintiff as the owner of all rights of the copyrights in the aforementioned copyright titles, has intentionally and willfully copied, distributed, and publicly displayed and sold and/or offered for sale, several t-shirt designs that are almost identical and at least substantial similar to Plaintiff's copyrighted works.

37. Plaintiff is the creator, author, and owner of all rights in the LOWER EAST SIDE MURAL© and LEFS Design© copyrights.

36. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 35 of this Complaint.

FOURTH CAUSE OF ACTION COPYRIGHT INFRINGEMENT

35. Defendant's unlawful conduct has been and will continue to be willful or willfully blind to Plaintiff's rights, as Defendant has reason to know of Plaintiff's rights.

34. By reason of the foregoing, Defendant has infringed and continues to infringe on Plaintiff's common law rights in the LOWER EAST SIDE™ and LES NYC® mark and defendant has become unjustly enriched by such acts of infringement.

33. Defendant's unauthorized use of Plaintiff's LOWER EAST SIDE™, THE LOWER™, LES NYC® mark is likely to continue to cause further confusion to the public as to the clothing goods and accessories of the respective parties.

32. Defendant's conduct constitutes deception by which Defendant goods will be palmed off as those of Plaintiff. Such conduct constitutes trademark infringement and unfair competition in violation of the laws of the State of New York.

39. The Defendants action individually and collectively constitute copyright infringement and have caused and will continue to cause Plaintiff irreparable harm and injury unless enjoined by this Court.

40. By reason of Defendant's infringement of Plaintiff's copyrights in connection with the sale, exploitation and publishing of clothing designs, Defendants have derived revenues and profits attributable to said infringement, the amount of which has yet to be ascertained.

**FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT**

41. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 40 of this Complaint.

42. Defendants have unjustly retained profits from the advertising, publishing and/or sale of clothing goods and accessories bearing Plaintiff's LOWER EAST SIDE™, THE LOWER™ and/or LES NYC® marks and registered copyrights.

43. Defendant's actions constitute unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. Entry of an order and judgment requiring that all defendant, its subsidiaries, officers, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with them, be preliminarily and, thereafter, permanently enjoined and restrained from (a) using in any manner the trade name, trademark, domain name or other indicia or origin, including in whole or part the term LOWER EAST SIDE™, LES NYC®, or any colorable imitation thereof; (b) advertising, operating a website, using business stationary or offering any goods or services using the trade name, trademark, domain name, URL, or any other indicia of origin including in whole or part the term LOWER EAST SIDE™, THE

LOWER™ and/or LES NYC®, or any colorable imitation thereof; (c) otherwise engaging in any acts of unfair competition and infringement which tend to injure Plaintiff's rights in the LOWER EAST SIDE™ and LES NYC® marks.

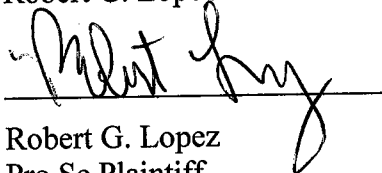
2. That Defendant be required to account to Plaintiff for any and all profits derived by it, and to compensate Plaintiff for all the damages sustained by reason of the acts complained of herein, and that the damages herein be trebled pursuant to the Trademark Act.
3. That Defendant be ordered to deliver up for destruction any and all infringing materials bearing the LOWER EAST SIDE™ THE LOWER and LES NYC® marks, and any colorable imitation thereof, in whole or part.
4. That Plaintiff be awarded punitive damages.
5. That Defendant be required to place advertisements or send notifications to past and present customers that it improperly has been using the LOWER EAST SIDE™ and LES NYC® marks.
6. That Plaintiff be awarded the cost and disbursements of this action.
7. That Plaintiff have such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: July 11, 2016
New York, New York

Respectfully submitted,
Robert G. Lopez – Pro Se

A handwritten signature in black ink, appearing to read "Robert Lopez", written over a horizontal line.

Robert G. Lopez
Pro Se Plaintiff
230 Clinton Street – Apt. #11C
New York, New York 10002
(917) 868-1698

EXHIBIT A



United States Patent and Trademark Office

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LES NYC

Word Mark	LES NYC
Goods and Services	IC 025. US 022 039. G & S: Baseball caps and hats; Hooded sweatshirts; Short-sleeved or long-sleeved t-shirts; T-shirts. FIRST USE: 19991200. FIRST USE IN COMMERCE: 19991200
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85335314
Filing Date	June 1, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 1, 2014
Registration Number	4549880
Registration Date	June 17, 2014
Owner	(REGISTRANT) Lopez, Robert G. INDIVIDUAL UNITED STATES 230 Clinton Street - Apt. #11C New York NEW YORK 10002
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	LIVE

EXHIBIT B

New York State Department of State Certificate of Trademark Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Registration Number: R31067

Registration Date: 06/06/07

Applicant:

ROBERT G. LOPEZ
230 CLINTON STREET APT. #11C
NEW YORK

NY 10002-

State of Incorporation or
Partnership Organization:

Class Numbers: 25

Date First Used in NYS: 12/1999

Date First Used Anywhere 12/1999

Trademark Description:

LOWER EAST SIDE

The mark is comprised of the words "Lower East Side" in stylized letters with an underline and overline.

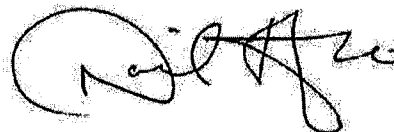
Description of Goods:

Clothing, namely, T-shirts, Hooded Sweatshirts, Vest, Hats and Caps as adopted from the USPTO.

WITNESS my hand and the seal of the State of New York In
the City of Albany on this:

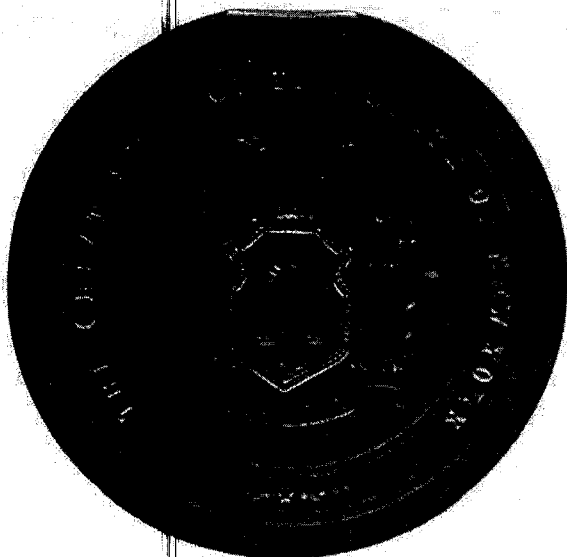
Thursday, August 16, 2007

by:



Special Deputy Secretary of State

DOS-690 (Rev. 3/01)



New York State Department of State Certificate of Trademark Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Registration Number: R31773 **Registration Date:** 11/22/10

Applicant: ROBERT G. LOPEZ
230 CLINTON ST. - APT #11C
NEW YORK NY 10002-

**State of Incorporation or
Partnership Organization:**

Class Numbers: 25

Date First Used in NYS: 03/00/08 **Date First Used Anywhere:** 03/00/08

Trademark Description:

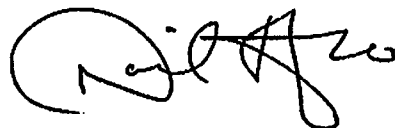
The mark is comprised of the words "THE LOWER" with five stars appearing beneath the literal element of the mark.

Description of Goods: Clothing, namely; T-shirts, hooded sweatshirts and caps.

***WITNESS my hand and the seal of the State of New York in
the City of Albany on this:***

Monday, November 22, 2010

by:



Special Deputy Secretary of State

EXHIBIT C

Copyright

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Name = Lopez, Robert G

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Labeled View

LOWER EAST SIDE MURAL.

Type of Work: Visual Material

Registration Number / Date: VA0001753473 / 2010-12-16

Application Title: LOWER EAST SIDE MURAL.

Title: LOWER EAST SIDE MURAL.

Description: Electronic file (eService)

Copyright Claimant: Robert G. Lopez, 1976- . Address: 230 Clinton Street #11C, New York, NY 10002,
United States.

Date of Creation: 2007

Date of Publication: 2007-09-25

Nation of First Publication: United States

Authorship on Application: Robert G. Lopez, 1976- ; Domicile: United States; Citizenship: United States.
Authorship: photograph(s)

Names: Lopez, Robert G., 1976-



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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Name = Lopez, Robert G

Search Results: Displaying 3 of 11 entries



Labeled View

LEFS Design.

Type of Work: Visual Material

Registration Number / Date: VA0001807134 / 2012-02-13

Application Title: LEFS Design.

Title: LEFS Design.

Description: Electronic file (eService)

Copyright Claimant: Robert G. Lopez. Address: 230 Clinton Street, Apt. 11C, New York, NY, United States.

Date of Creation: 2010

Date of Publication: 2010-10-10

Nation of First Publication: United States

Authorship on Application: Robert G. Lopez; Domicile: United States; Citizenship: United States. Authorship: photograph(s)

Names: Lopez, Robert G.



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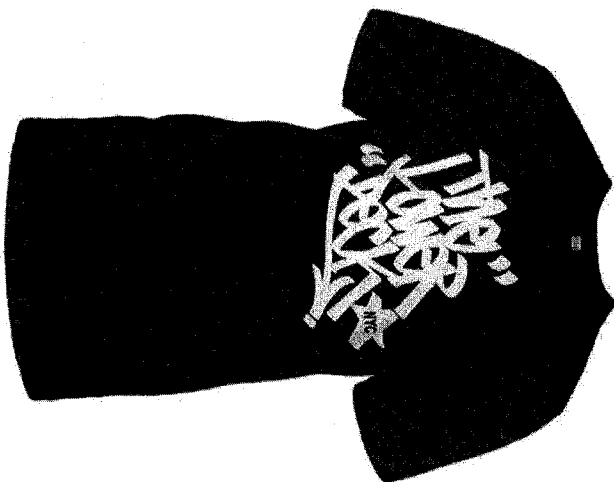
(/)

REALLY FRESH ATTIRE (/)

NEW YORK CITY T-SHIRTS



(<http://65.media.tumblr.com/cd6048c0feb84dc5e>)



(<http://66.media.tumblr.com/a7f109f3e2670de26e>)

Back of the Lower Tee

●●●●●●●●

\$29.00

(<http://66.media.tumblr.com/26803e1e93bd7138a4>)

Men's "The Lower Deck NYC" T-Shirt

So you're from Downtown NYC?

Then you should know that it's also recognized as "The Lower Deck" of New York City. You

~~can't get any further down into Lower~~
Manhattan than this, and this tee will make
sure everyone knows that!



(<http://65.media.tumblr.com/f2a27557fb6b>)

Relaxed Fit Ladies Tee

●●●●●●●●

(<http://67.media.tumblr.com/b33f6642da44>)

Women's "Lower East Side Story" Tee

In New York City there are 8 million stories. From eating at Katz's Delicatessen, shopping on Delancey & Orchard Streets, visiting Chinatown & Little Italy, everyone |
story. Celebrate one of the best places in t
world with this awesome tee and let us kn

What is your Lower East Side Story?